

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CASE NO. 05-40104-FDS

ROBERT WHITE, PRO SE

Petitioner,

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS,
THE HONORABLE HENRY J. BOROFF,
Et. al,
BANKRUPTCY CASE NO. 03-44906-HJB

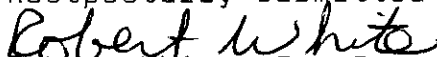
Respondents.

MOTION TO FILE THIRD AMENDMENT TO WRIT OF HABEAS CORPUS

Petitioner requests leave to file his third amendment to his Writ of Habeas Corpus.

The pivot of Petitioner's argument that he has been improperly sentenced for criminal contempt lies in the fact the Bankruptcy Court intended to punish Petitioner rather than coerce him into compliance with the Bankruptcy Court's order. The Bankruptcy Court was obligated to accept Petitioner's request to make payments toward the sanction instead of incarcerating Petitioner. According to UNITED STATES v. UNITED MINE WORKERS, 330 US 258 (1947), when fixing the fine for a contempt conviction the Court must consider the financial resources of the defendant and burden upon him. The Bankruptcy Court is also obligated to impose the least coercive means to encourage Petitioner to comply with its orders. Additionally, FRANK v. UNITED STATES, 395 US 147, establishes that any federal incarceration greater than 6 mos. is recognized as a serious offense. Further, UNITED STATES v. HALLOWAY, 991 F.2d 370 recognizes that criminal contempt may not be punished by a fine and incarceration. The Bankruptcy Court has abused its discretion on all this counts.

Respectfully submitted on this July 31, 2005, by


Robert White, Pro Se